IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 701 OF 2006
IN
SUIT NO. 690 OF 2006

Surekha Dhurup Yadav .. Plaintiff.

V/s.

Vaishali Dattaram Pawar .. Defendant.

Mr.R.P.Ojha i/by H.P. Pandey for the Plaintiff.

CORAM : S.A. BOBDE, J.

DATED : 27th NOVEMBER, 2006.

P.C.:

. By this notice of motion, the plaintiff seeks an injunction, restraining the defendant from selling, transferring and /or otherwise parting with the possession or creating any third party interest in respect of the suit premises namely, Ground plus upper floor, Janshakti Rahiwasi Sangh, Trimurti Chawl, Malpa Dongri No.2, Opp. Hanjar Nagar, Andheri (E), Mumbai.

2. None appears for the defendant though the defendant was apparently represented when the last order was passed by this court on 23rd March, 2006. The plaintiff's claim in the suit is for a specific performance of an agreement dated 20th October, 2004 or

in the alternative return of Rs. two lakhs that is said to have been loaned by the plaintiff to the defendant. By the agreement, it appears that the defendant has agreed to transfer the suit premises on her failure to return Rs.Two lakhs borrowed by her from the plaintiff within a period of 30 days. It appears that on the last occasion the defendant appeared before this court through Advocate and made a statement that she will not create any third party rights in respect of the suit premises. The statement is recorded by the court in the order dated 23rd March, 2006.

3. In the circumstances it would be appropriate to restrain the defendant from creating any third party rights, pending the decision in the suit in view of the agreement. It may be noted that the agreement vide clause 3, empowers the plaintiff to take possession of the suit premises and recover the amount of loan by selling the premises and /or adjusting the loan amount by taking the suit premises for her own use. It is clear that this agreement would be frustrated if the defendant creates third party rights in the premises. There shall, therefore, be an injunction in terms of prayer clause (a), which reads as follows :-

"(a) that pending the hearing and final

disposal of the suit, the defendant, her agents, servants and/or any other person/s claiming through or under her be restrained by an order and injunction of this Honourable Court from selling, transferring and/or otherwise parting with the possession of creating any third party interest in respect of the suit premises viz. premises consisted of ground plus upper floor, situated at Janshakti Rahiwasi Sangh, Trimurti chawl, Malpa Dongri No.2, Opp. Hanjar Nagar, Andheri (E), Mumbai -400093.

4. Notice of motion is allowed accordingly.

(S.A.BOBDE,J.)

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